

FILED

JUN 13 2014

  
Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF SOUTH DAKOTA

Civil Action No.	<u>14-4094</u>	

	MATTHEW ALAN SMITH,	,
	Plaintiff(s),	
v.		
	UNITED PARCEL SERVICE, Inc.,	,
	Defendant(s).	

**AMENDED COMPLAINT**

Plaintiff, Matthew A. Smith, as for further provisions of his original complaint Pro Se states and alleges as follows:

No Mediation - Adverse Action

Negligence based on employment contract, which are Permitted Claims, and, thus, they remain subject to the Limited Relief From Automatic Stay, and the continued prosecution of monetary relief as prohibited.

The company has broken and deceptively manipulated contract as asserted through all claims.

Conflicting Agreements point at which agreements are active are implicated/must be figured as contractually they are not clear. Plaintiff broke no agreement.

**INTRODUCTION**

When it comes to the terms of the contract (Company Policy, Code of Conduct, and Employment Agreement) between The Company, and Plaintiff: whether the added terms were part of the contract depends on the following questions:

1. Are the terms material?
2. Was the offer limited?
3. Does one side object?

When it comes to the terms of the contract (Employment) between the Plaintiffs Supervisor, International Coordinator, Managers, The Company, and Plaintiff: whether the added terms were part of the contract depends on the following questions:

1. Are the terms material?
2. Was the offer limited?
3. Does one side object?

Because the terms were not material; in that there were inaccurate or ambiguous statements, Mr. Smith objected and appealed to HR, this contract was temporarily voided.

Although closed, The contracts should be rescinded (set aside) making them further open and still voided as there was present misrepresentation and Duress. Misrepresentation in that there failed to disclose pertinent information about its intellectual property that would affect someone's decision to enter into the contract and fraud is the knowing and intentional disclosure of false information or the knowing failure to disclose relevant information. 1. Misstatement of a material fact(or the failure to disclose a material fact) 2. Reliance by the respondeat/agent on that material misstatement or omission 3. Resulting damages to the respondeat/agent 4. Fraud or Fraudulent Misrepresentation. Duress; Duress occurs when a party is physically forced into a contract or deprived of a meaningful choice when deciding whether to enter into a contract such coercion would not rise to the level of "an unlawful or wrongful act."

#### **JURISDICTION AND VENUE**

- This Court has jurisdiction over the plaintiffs' claims pursuant to the acts alleged in this complaint above, if proven, may constitute a violation as well as all else mentioned or asserted. Venue in the District of SOUTH DAKOTA is proper under the claims of the State of SOUTH DAKOTA to 28 U.S.C. § 1337. The state and federal venue of this action is proper in SOUTH DAKOTA. Venue is Asserted, Private Rights of Action and The violation of statute; expressly or by implication. Specifically, All persons born in the United States are subject to the jurisdiction thereof; the enumeration in the constitution of certain rights, shall not be used to deny or disparage others retained; Deprivation of life, liberty, property, and equal protection; These powers are concurrent to by the people those of the state; Judicial Records and Proceedings; entitlements and equal justice; and the Supreme Law of the Land.

#### **PLAINTIFFS**

- Plaintiff Matthew A. Smith is a citizen of Colorado who had presently resided at the following address: 12419 W. 2nd Place Lakewood, CO 80228.

### **DEFENDANTS**

- Defendant UNITED PARCEL SERVICE, Inc. is a corporate organization with offices formerly located in the state of SOUTH DAKOTA who presently resides at the following address: 55 Glenlake Parkway NE Atlanta, GA 30328.

### **GENERAL ALLEGATIONS**

- All the various efforts in attempt to cover up foul play throughout these proceedings and
- there before must be at point. There is evidence that the company is creating meaning for company policies and agreements with prejudice as opposed to what was written.
- At Will Employment provides for negligence when there is a question of reason for the negligent act. There was breach of contract;
- UPS had contracts with the plaintiff that were broken. Grounds for MAPP (Initial Assessment);
- Reason for MAPP (Initial Assessment) must not be Negligent in any form. It was; finally
- All claims are within the statute of limitation. In the business world at will employment is no factor in the eyes of the law. Is just a term to use to keep employees in line. It's to distress or anger into flight/obedience.

### **SPECIFIC ALEGATIONS**

- As for what is confidential between company and it's personnel at liberty and the law all that is argued and specified through agreement and/or contract the court of law must find its contract was indeed broken, related to negligent MAPP (Initial Assessment).

#### **There was Inappropriate MAPP (Initial Assessment) For Convenience**

- The contract was terminated for the convenience of the Organization under the contract clause authorizing the MAPP (Initial Assessment);
- The effective date of MAPP (Initial Assessment);
- Any special Instructions; and
- The steps the organization should take to minimize the impact on personnel if the MAPP (Initial Assessment), together with all other outstanding MAPP (Initial Assessment), will result in a significant reduction in the organization's work.

**There was Inappropriate MAPP (Initial Assessment) Contracting Officer (Conflict of Interest)**

- It was not known that the organization would accept a no cost settlement,
  - employee options were not furnished, and
  - There is outstanding correspondence/facts ignored between the employee, or other organization obligations.
- 
- The employee and organization cannot reach a bilateral agreement on all elements of outstanding cost; or
  - The organization has not submitted a settlement proposal within the period stipulated in the MAPP (Initial Assessment) clause.
- 
- Circumstances clearly indicate a requirement for the terminated items; and
  - Correction were are advantageous to the employee.

**There was Inappropriate MAPP (Initial Assessment) for Company Leave Assignment Codes**

- The terms of the contract and applicable laws and regulations.
- The specific failure of the organization and the excuses for the failure.
- The availability of the employee or services from other sources.
- The urgency of the need for the employee or services and the period of time required to obtain them from other sources, as compared with the time delivery could be obtained from the delinquent organization.
- The degree of essentiality of the organization in the employee acquisition program and the effect of a MAPP (Initial Assessment) for default upon the organization's capability as a supplier/servicer under other contracts.
- The effect of a MAPP (Initial Assessment) for default on the ability of the organization to liquidate guaranteed loans, progress payments, or advance payments.
- Any other pertinent facts and circumstance.

**There was MAPP (Initial Assessment) For Contracts**

- Comply with contract terms and conditions; or

- Provide the employee, upon request, with adequate assurances of future performance.

After consult:

- The terms of the contract and applicable law/regulations
- The specific failure of the organization and the explanations for the failure
- The availability of the employee and services from other sources
- The urgency of the need for the employee or services.

Prior, During, and After Final Decision:

- Notifying Parties of MAPP (Initial Assessment) for Cause
- Notice to Interested Parties
- Conference with the Company or Party Amending the MAPP (Initial Assessment) for Cause Stipulation/Clause Notice
- Reaching Agreement on MAPP (Initial Assessment)
- There must be thoroughly reviewed Guidebook, Policies, Directives, Regulations, and Laws

### **FIRST CLAIM FOR RELIEF**

The plaintiff asks the court to recognize he was wrongfully terminated by the United Parcel Service.

### **SECOND CLAIM FOR RELIEF**

The plaintiff asks the court to recognize whether the organizations negligence was wilful, purposeful, intentional, or malicious based on the conditions, or privledges, specifically, UPS contracts that were entrusted to personnel.

### **THIRD CLAIM FOR RELIEF**

The plaintiff asks the court to recognize he was not negligent comparitively or contributorilly.

### **DAMAGES**

Plaintiff has asserted claims against the United Parcel Service, under both state and federal law recognize claims, relief, damages, interest, costs, and attorney consultation fees. As for the plaintiffs allegations related to discrimination the following tortious claims are at question:

**Negligent**

**Intentional  
Economic  
Quasi**

- Through law and/or company policy the plaintiff was owed a **Duty of Care**.
- There was a **Dereliction or Breach** of that duty.
- The tortfeasor **Directly Caused (Cause In Fact)** the injury [but for the defendant's actions, the plaintiff would not have suffered an injury].
- The plaintiff suffered **Damage(s)** as a result of that breach.
- The damage was not too **Remote**; there was no Proximate Cause

The Relief and Remedies the plaintiff is seeking were caused by the intentional acts and practices that have over the years had a negative effect on him.

**SOUTH DAKOTA PRAYER FOR RELIEF**

The Pro Se Plaintiff request further provisions of this complaint as necessary or appropriate after additional or further discovery is completed in this matter, and after all appropriate parties have been served; and proper in the circumstances. As it is right now there is no reasonable doubt that negligence did not exist one tool used to prove negligence in this case is Res Ipsa Loquitur. Furthermore, the Pro Se Plaintiffs negligent treatment is clear and convincing evidence supporting what will be revealed, withheld, or denied to the Pro Se Plaintiff(s) the equal terms, conditions, or privledges relating to the relief requested.

Respectfully submitted this day of 6-9-14.



Matthew A. Smith  
Petitioner

P.O. Box 350217

Address

Westminster, CO 80035

City, State, Zip Code

(720) 938-3766

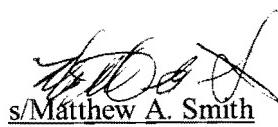
(Area Code) Telephone Number (home and work)


MATTHEW ALAN SMITH, Plaintiff,	UNITED PARCEL SERVICE, Inc., Defendant,

#### CERTIFICATE OF SERVICE

The plaintiff certify that on June 9, 2014 (date) that either filed with the Court and a true and accurate copy of this **AMENDED COMPLAINT** were served by either:  
Hand Delivery, E-filed, E-mailed, Faxed to this number: \_\_\_\_\_, or by placing it in the United States mail, and addressed to the following:

**Attorneys For Defendant UNITED PARCEL SERVICE, Inc.,**



s/Matthew A. Smith